

SERVICE DATE - JULY 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-402 (Sub-No. 8X)

FOX VALLEY & WESTERN LTD.–ABANDONMENT  
EXEMPTION–IN BROWN AND OUTAGAMIE COUNTIES, WI

Decided: July 23, 2003

By decision and notice of interim trail use or abandonment (NITU) served on March 2, 2001, Fox Valley & Western Ltd. (FVW) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 4.78 west of Green Bay to milepost 38.98 in New London, in Brown and Outagamie Counties, WI. The exemption was made subject to employee protective, historic, environmental, and other conditions.<sup>1</sup> By decision served August 15, 2001, the historic condition was modified to require that FVW retain its interest in and take no steps to alter the integrity of the rail line located within the boundaries of the Oneida Indian Reservation until completion of the section 106 process of the National Historic Preservation Act, which will determine the effect on cultural and historic resources.

The Board's Section of Environmental Analysis (SEA) indicates that a Memorandum of Agreement (MOA) that was developed to mitigate the adverse effects of the proceeding on historic properties has been signed<sup>2</sup> and submitted to the Advisory Council on Historic

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<sup>1</sup> In that decision, the Board authorized FVW to negotiate an interim trail use/rail banking agreement with the Wisconsin Department of Transportation, on behalf of the Wisconsin Department of Natural Resources (WisDNR), pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). At the request of FVW and WisDNR, the negotiating period under the NITU was extended to August 24, 2002, by decisions served September 5, 2001, and February 25, 2002. By decision served August 20, 2002, the negotiating period under the NITU was extended to February 18, 2003, for the portion of the right-of-way between milepost 14.9 and milepost 38.98, and FVW was authorized to abandon the portion of the right-of-way between milepost 4.78 and milepost 14.9 if the environmental conditions imposed in this proceeding have been met.

<sup>2</sup> The MOA is signed by the Board, FVW, the Oneida Tribe of Indians of Wisconsin, Menominee Indian Tribe of Wisconsin, Ho-Chunk Nation, and the Wisconsin State Historic Preservation Office.

Preservation. The section 106 process has thus been completed and SEA therefore recommends that the section 106 condition be removed.

Accordingly, the proceeding will be reopened and the previously imposed section 106 historic condition will be removed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the section 106 historic condition imposed in the decision served on March 2, 2001, and modified by decision served August 15, 2001, is removed.
3. All other provisions and environmental conditions imposed in the March 2, 2001 decision in this proceeding will remain in effect.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary